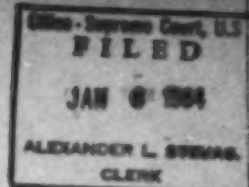


83-1111



No. 83-

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1983

HEUBLEIN, INC.,

Petitioner,

against

GENERAL CINEMA CORPORATION,

Respondent.

MOTION FOR JOINT
CONSIDERATION

Petitioner, Heublein, Inc., through its counsel, respectfully moves the Court for an order providing for joint consideration of its Petition for Writ of Certiorari with the Petition in Texas International Airlines, Inc. v. National Airlines, Inc. (No. 83-932).

The instant Petition for Certiorari seeking review of a decision of the Second Circuit Court of Appeals was filed simultaneously herewith on January 6, 1984. The Petition by Texas International Airlines, Inc. seeking review of a decision by the Fifth Circuit Court of Appeals is dated December 6, 1983.

As grounds for this motion, Petitioner's counsel states:

1. The two petitions present important and closely related questions arising out of the interpretation

of Section 16(b) of the Securities Exchange Act of 1934 and of this Court's decision ten years ago in Kern County Land Co. v. Occidental Petroleum Corp., 411 U.S. 582 (1973). That decision dealt with the interrelationship between Section 16(b) and the Williams Act (which regulates corporate takeover contests) when a formal tender offer has been made. In the cases which are the subject of the petitions of both Heublein and Texas International, no formal tender was made by either defendant, yet the analyses of both the Second and Fifth Circuits were purportedly based upon the Kern County decision. Furthermore, the Circuit Courts' analyses led to different and inconsistent results.

2. The question of the application of Section 16(b) to the area of takeover contests where no formal tender offer has been made is of great and increasing importance. This is exemplified not only by the two opinions sought to be reviewed herein, but also by numerous other cases from the district courts and the Courts of Appeal which have dealt with these issues in the ten years since the Kern County decision was announced. Within the last ten years, merger and takeover activity has increased enormously, and numerous new strategies for achieving large short-term profits have emerged. The present cases, as more fully described in the Petitions for Certiorari, set forth in somewhat different contexts the significant issues which arise regarding the application of Section 16(b) to takeover cases where no formal tender offer has been made.

3. Joint consideration of these Petitions will permit the Court to consider two important cases in which the factors which underlay the Kern County decision have

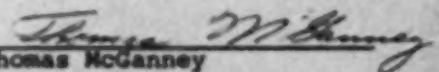
been applied inconsistently and to view the differing contexts in which Section 16(b) problems arise in the takeover area. It will also permit the Court to better assure the proper administration of the Securities Exchange Act of 1934 as intended by Congress and under the principles set forth by the Court in Kern County.

4. Petitioner's counsel has contacted George Davidson, Esq., counsel for Texas International, who stated that Texas International did not intend to oppose the instant motion.

WHEREFORE, Petitioner prays that the Court order that the Petition of Heublein, Inc., No. 83-1111 be jointly considered with the Petition of Texas International Airlines, Inc., No. 83-932.

Dated: New York, New York
January 6, 1984

Respectfully submitted,


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